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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR MARTIN GUEVARA,

Defendant and Appellant.

2d Crim. No. B270412
(Super. Ct. No. MA066399)
(Los Angeles County)

A jury found Victor Martin Guevara guilty of two counts of assault (Pen. Code, § 240),¹ one count of battery (§ 242), and one count of battery causing serious bodily injury (§ 243).²

¹ All further statutory references are to the Penal Code.

² Guevara's convictions for assault were charged as assault with a deadly weapon (§ 245, subd. (a)(1)), and his conviction for battery was charged as battery with serious bodily injury (§ 243, subd. (d)), but the jury found him guilty only of the lesser included offenses.

The trial court imposed an aggregate sentence of 545 days in jail and five years of probation. Guevara contends that there was insufficient evidence of aiding and abetting to support his conviction for battery causing serious bodily injury. We affirm.

FACTS

Marline Arriola had her family over for Easter dinner. Among the guests were her two brothers Ernest and David Pina, her step-niece Ashley, and her step-nephew Frankie Ruiz and his daughters Kimberly and Candy. Marline's husband, her father-in-law Ray Arriola, and her brothers Danny and Freddy Pina lived with her.³ Two of Ray's friends, Guevara and Rick Mora, also showed up.

When Ernest and David arrived in the early afternoon, Ray was in the front yard with his friends. Guevara was holding a half-empty bottle of whiskey. They were arguing with Danny. Ray was "calling Danny names" and "wanting to fight with him." "There was a lot of yelling." Ray, Guevara, and Mora "were . . . surrounding Danny." Ernest jumped out of the car and asked, "What's going on? Why are you guys picking on Danny?" Ray "said there was nothing going on." His speech was slurred. Ray, Guevara, and Mora appeared drunk. They left and went to the back yard.

³ We refer to members of the Arriola and Pina family by their first names to avoid confusion. No disrespect is intended.

For the rest of the afternoon, “everybody was having a good time.” Ernest had several beers and a shot of whiskey that Ray had given him. None of his siblings consumed alcohol. After a few hours, Ray, Guevara, and Mora announced they were leaving. A few minutes after they left the house, Ernest went outside and saw Guevara and Mora trying to get Ashley, who was 17 or 18 years old, and Kimberly and Candy, who were 14 or 15 years old, to get in their truck and leave with them.⁴

Ernest told Guevara and Mora that the girls were underage and that “they weren’t going nowhere.” Guevara and Mora insisted that the girls were leaving with them, which led to an argument that Guevara and Mora “just escalated from there.” They asked Ernest what he was going to do to stop them. He said, “I will stop you. Don’t worry about that.” He then “got up in front of [Guevara’s] face” and pushed him. Guevara swung at Ernest, and they started punching each other.

At that point, Ernest’s account of the fight diverged somewhat from Freddy’s.⁵ According to Ernest, Mora also started hitting him. After the three of them fought for a few minutes, Ernest hit Mora, and Mora “went down, and . . . didn’t get up.” Ernest turned his attention to Guevara and they continued fighting. Ernest heard Freddy yell from somewhere behind him

⁴ At the time, Guevara was 49 years old.

⁵ Defense counsel presented evidence that Ernest’s blood alcohol level at the time was approximately .207 percent.

by the house. When he turned around, Mora struck him with an object in the side of his head and he “went down.”

According to Freddy, he heard the argument over the girls and saw Ernest and Guevara “swinging at each other” and “wrestling.” Freddy “ran to them to break it up” by “pulling them apart.” He swung at Guevara and missed. Guevara hit Freddy. Ernest “pushed [Freddy] away and said, ‘I am going to deal with him.’” Ernest walked towards Guevara, who was backing up. As Ernest and Freddy continued arguing with him, Mora got out of the truck. Guevara, facing Ernest and Freddy as Mora was walking up from behind them, said “he didn’t want to fight [them] no more.” Mora struck Ernest in the head with a metal bar that was about eight inches long and two to three inches in diameter. Mora then hit Freddy in the head with the bar. At that moment, the rest of the family came out of the house.

David ran outside and saw Mora with his arms around Ernest pinning Ernest’s arms at his side while Guevara punched Ernest in the jaw. When David ran towards them, Guevara and Mora dropped Ernest, and “he just fell to the floor.” Marline saw Freddy “rushing” Guevara and Ernest “falling to the floor.” Ernest was between Guevara and Mora. He was bleeding from his head. Ruiz called the police.

“After everything calmed down a little,” Guevara picked up a metal pipe from the ground and threw it in the back

of his truck. They got in the truck to leave. David, Freddy, and Danny tried to stop them, telling them, “just wait for the police. Just wait. It will be worse if you leave.” Guevara “threatened [Freddy] that he was going to come back and shoot [him] with a gun.” Danny grabbed the keys out of the ignition. Guevara and Mora “got back in the truck and coasted [in neutral gear] all the way down the hill” away from the house.

Freddy was bleeding from his head. He was taken to the hospital where he received four or five stitches. Ernest “was completely [knocked] out” from the blow. He required hospitalization for three months. At trial three years later, he still experienced “bad” pain in his neck “all the time” that “goes down [his] spine . . . to [his] legs.”

DISCUSSION

Guevara contends that there is insufficient evidence to support his conviction for battery causing serious bodily injury to Ernest. The jury considered his liability only as a direct aider and abettor. Guevara argues that “there was no evidence on two important elements of aiding and abetting, that; (1) [he] knew that Mora intended to escalate the fistfight and cause serious bodily injury of Ernest with a metal pipe and (2) that before or during the crime [he] intended [to] and did aid and abet Mora.”

“When the sufficiency of the evidence to support a conviction is challenged on appeal, we review the entire record in

the light most favorable to the judgment to determine whether it contains evidence that is reasonable, credible, and of solid value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] ‘Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.’ [Citation.] Unless it describes facts or events that are physically impossible or inherently improbable, the testimony of a single witness is sufficient to support a conviction. [Citation.]” (*People v. Elliott* (2012) 53 Cal.4th 535, 585.)

Guevara was facing Ernest and Freddy as Mora was sneaking up behind them with the metal bar and, the jury could infer, was aware that Mora was about to attack them with it. Guevara aided the surprise attack by telling Ernest and Freddy that “he didn’t want to fight [them] no more,” lulling them into a false sense of security. Moreover, David saw Guevara punching Ernest in the jaw as Mora held him, and both David and Marline saw Ernest fall to the ground after Mora let go of him. The jury could have inferred that this happened *after* Mora struck Ernest with the metal bar, given that Ernest appeared to be unconscious and was bleeding. By continuing to help Mora injure Ernest after Mora had already seriously wounded him, Guevara further

displayed his intent to aid and abet the offense. Guevara's behavior afterwards—threatening to shoot Freddy with a gun and fleeing the scene when the police were on their way—further supports his guilt. (See *People v. Brooks* (1966) 64 Cal.2d 130, 138 [“Evidence of flight supports an inference of consciousness of guilt and constitutes an implied admission”].) Substantial evidence supports his conviction for battery causing serious bodily injury.

DISPOSITION

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Lisa M. Chung, Judge
Superior Court County of Los Angeles

Jennifer Hansen, under appointment by the Court of
Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A.
Engler, Chief Assistant Attorney General, Lance E. Winters,
Senior Assistant Attorney General, Michael R. Johnsen,
Supervising Deputy Attorney General, and Lindsay Boyd, Deputy
Attorney General, for Plaintiff and Respondent.